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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,525	10/15/2004	Hui-Fang Chang	100694-1P US	4565
22466 7590 08/24/2007 ASTRA ZENECA PHARMACEUTICALS LP GLOBAL INTELLECTUAL PROPERTY 1800 CONCORD PIKE WILMINGTON, DE 19850-5437			EXAMINER DESAI, RITA J	
			ART UNIT 1625	PAPER NUMBER
			MAIL DATE 08/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,525	Applicant(s) CHANG ET AL.	
	Examiner Rita J. Desai	Art Unit 1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The finality of the previous action has been vacated.

The claims under consideration are 1-4, 14-19.

Claims 14-17 are withdrawn.

The rejection of the claims over Obvious type double patenting still stands as applicants have not filed a terminal disclaimer.

The rejection of the claims 1-4, 18 and 19 over all the various references US6995167, US 2003149065, US 2005250802, Loch James III (WO 0042044) And Phillips et al, US 6110914 and US 6569865, WO 99/03859. US 10/511535 under 103 with a 102 date has been withdrawn . however applicants are correct to point out that all the references do not have a 102e date and examiner has given a new rejection.

Claim Rejections - 35 USC § 103

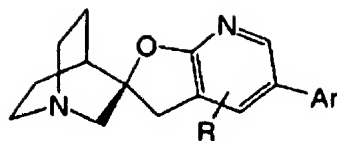
Claims 1-4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips et al WO 99/03859 and Lock et al WO 0042044.

Applicants compounds and the compounds of the prior art have a very close structural similarity.

The core is the same only the type of the het group (Ar) group is different.

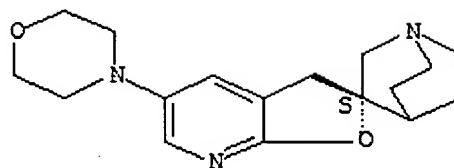
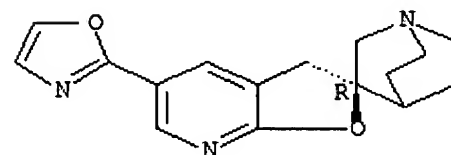
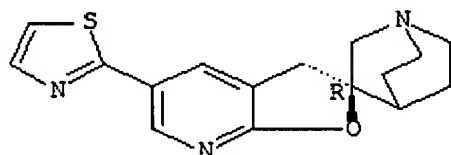
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Applicants compounds have

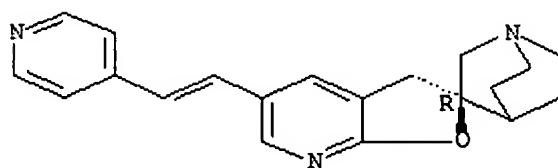


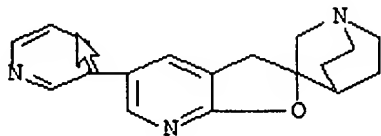
wherein Ar is a

het ring with 2 hetero atoms, N and oxygen or sulfur such as

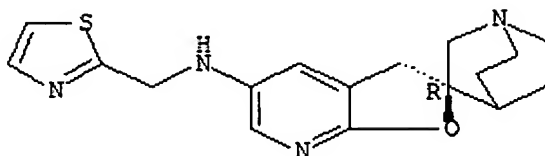


The prior art teaches WO 99/03859 teaches





The WO 0042044 teaches,



The reference WO 0042044 teaches the same het group but it is not directly attached to the “furo-pyridine” ring.

But the WO 99/03859 reference at the same time teaches other hetero rings such as piperazine and morpholine which are directly attached.

Thus motivating one of skill in the art to modify the compounds to obtain similar homologues.

While homology is considered to be present, even if true “homology” is not present, such does not defeat the prima facie case of obviousness raised by the art. In *reDruey et al*

50 CCPA 1538, 319 F. 2d 237, 138 USPQ 39 wherein Judge Worley, delivering the Courts’s opinion stated:

“We need not decide here whether the compounds in question are properly labeled homologues. It appears to us from the authorities cited by the solicitor and appellants that the term homologue is used by chemists at times in a broad sense, and at other times in a narrow or strict sense. The name used to designate the relationship between the related compound is not necessarily controlling; it is the closeness of that relationship

which is indicative of the obviousness or unobviousness of the new compound.” 50

CCPA 1541.

Also as the Court stated in, In re Payne et al., 606 F. 2d 302, 203 USPQ 245 at 255 (CCPA 1979):

“ the name used to designate the relationship between related compounds is not necessarily controlling; it is the closeness of that relationship which is indicative of the *obviousness or unobviousness of the new composition.*”

In addition, any question of why would one conceive and use the similar compounds (i.e. motivation’) is answered by the Court I *In re Gyurik et al., 596 F 2d 1012, 201 USPQ 552 at 557.*

“ In obviousness rejections based on close similarities in chemical structure, the necessary motivation to make the claimed compound, and thus the prima facie case of obviousness, rises from the expectation that compounds similar in structure will have similar properties.”

Conclusion

Claims 1-4, 18 and 19 are rejected.

Claims 14-17 are withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rita J. Desai
Primary Examiner
Art Unit 1625

R. Desai
8/22/07

R.D.
August 22, 2007